

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

ACKERBERG PROPERTIES, INC.
Sioux City, Iowa

Respondent

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Docket No. TSCA-07-2003-0186

CONSENT AGREEMENT AND FINAL ORDER

INTRODUCTION

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Ackerman Properties, Inc., 2936 Emerson Avenue South, Minneapolis, Minnesota, 55408.

COMPLAINANT'S ALLEGATIONS

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Supart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Complainant's Allegations Pertaining to All Counts

1. Ackerberg Properties, Inc. ("Respondent"), is a Minnesota corporation.
2. For all periods of time relevant to the violations alleged herein, Acky-Clifton Limited Partnership ("Owner") owned a residential apartment complex located at 55-95 West Clifton Avenue, in Sioux City, Iowa, and known as Clifton Estates Apartments (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. Prior to the violations alleged herein, Respondent had entered into a management agreement with the Owner, for the purpose of leasing the property.
6. On or about September 29, 2001, Respondent entered into a rental agreement (the "Apartment 211 Contract") with Keerti Patel for the lease of the Property, 75 W. Clifton Avenue, Apartment 211, for residential use.
7. Subsequent to the Apartment 211 Contract, Keerti Patel moved into Apartment 211.

8. As a result of the Apartment 211 Contract, the Owner became a "lessor", Respondent became an "agent", and Keerti Patel became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

Count I - Failure to Provide Pamphlet

9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

11. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Keerti Patel prior to being obligated under the Apartment 211 Contract.

12. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Keerti Patel prior to being obligated under the Apartment 211 Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count II - Failure to Disclose Presence of Lead-Based Paint

13. Pursuant to 40 C.F.R. § 745.107(a)(2), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in the housing.

14. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(2), or must personally ensure compliance with the same.

15. At the time of entering into the Apartment 211 Contract, both the Owner and Respondent were aware of a January 31, 1997 report, entitled *Property Assessment for Hazardous Substances*, which, as a result of testing conducted by an environmental contractor, reported the presence of lead-based paint in the Property.

16. Both the Owner and Respondent failed to disclose to Keerti Patel the presence of known lead-based paint prior to being obligated under the Apartment 211 Contract.

17. Respondent's failure to ensure the known presence of lead-based paint was disclosed to Keerti Patel prior to being obligated under the Apartment 211 Contract is a violation of 40 C.F.R. §§ 745.107(a)(2) and 745.115(a)(2) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above or liability based on those allegations.

2. For purposes of this Consent Agreement, Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Three Thousand and Eighty Dollars (\$3080) to be paid within thirty (30) days of the effective date of the Final Order, in full resolution of this matter.

6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and/or stipulated penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Three Thousand and Eighty Dollars (\$3080) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and


Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:
ACKERBERG PROPERTIES, INC.

Date 6-9-03

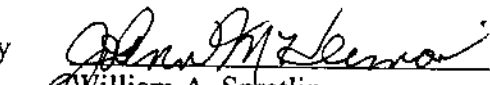
By


President
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

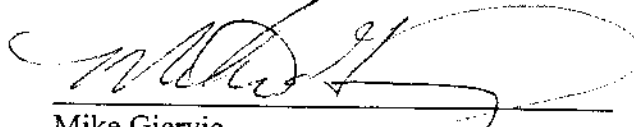
Date 6/16/03

By


William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date June 16, 2003

By


Mike Gieryic
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date June 18, 2003

IN THE MATTER OF Ackerberg Properties, Inc., Respondent
Docket No. TSCA-07-2003-0186

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Elizabeth A. Schmiesing, Esq.
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901

Dated: 6/19/03


Kathy Robinson
Regional Hearing Clerk